92-1557

Supreme Court, U.S.
FILED
DEC 21 1992
OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

Om P. Magoon - PETITIONER

vs.

Mettiki Coal Corp. - RESPONDENT

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

NAME: Om P. Magoon

ADDRESS: 718 Mitchell Drive

Oakland, MD 21550

PHONE NUMBER: (301) 334-1163

QUESTIONS PRESENTED FOR REVIEW

Because of the extreme prejudice and bias demonstrated by the judge in favor of the company during the whole of my trial, I did not get the fair trial. Age Discrimination in Employment Act claim being tried by the jury. But the jury was not given a chance to hear the case or any case for that matter. And jury was dismissed by the judge before they could give their verdict on the ADEA.

I deserve a new trial before a different judge. I may not be able to convince a jury that I should prevail, but I deserve the chance to at least present the facts.

Supporting arguments attached in the Statement of the Case.

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NO._____

IN THE SUPREME COURT

OF THE

UNITED STATES OF AMERICA

October Term, 1992

Om P. Magoon, Petitioner

vs.

Mettiki Coal Corp. Respondent

PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

Petitioner, Om P. Magoon, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the

Fourth Circuit.

OPINION BELOW

The opinion of the Court of Appeals appears in Appendix A to this petition. The opinion of the District Court for the District of Maryland appears in Appendix D to this Petition.

JURISDICTIONAL STATEMENT

The Court of Appeals' Opinion in this matter was filed on October 20, 1992. A timely Petition for Rehearing was filed on October 26, 1992. The Court of Appeals' denial of the Petition for Rehearing was issued on November 18, 1992 and is set forth in Appendix B. The issuance of the Mandate is set in Appendix C.

"STATEMENT OF THE CASE"

The primary reason that I lost the case was because Judge Hargrove was extremely biased in favor of the company and did not allow my attorney to develop any case of discrimination.

Time and again, the judge prevented evidence and testimony that Ms. Tsaknis tried to introduce. Many times, the judge himself objected to testimony, even though the company attorney was not objecting. Many times, the company attorney objected and the judge sustained the objection prior to the attorney giving the reason for his objection. Many times, the judge, rather than the company attorney, was the one who supplied the basis for the ojection. Because of the judge's constant interruption of Ms. Tsaknis, the case never fully got developed. Consequently, primarily because of the judge's intervention with my attorney's

presentation of the case, there was indeed an insufficient case to merit being submitted to the jury.

A reading of the transcript would reveal the clear bias by Judge Hargrove.

Going first to the transcript of the September 10 hearing, I point to the following pages to show the errors by the judge.

On page 106, the judge would not permit questions on age discrimination, even though throughout the proceedings he repeatedly stated that this was an age discrimination case.

On page 141, the judge sustained the company,s objection without waiting to hear the reason for the objection. The judge would not let me answer the question. The question was did I know the equivalent of my education in Europe and India in the United States? This was a relevant question and the jury was

entitled to hear the answer.

On page 150, the judge did not allow the questions to be answered. Ms. Tsaknis was not allowed to develop her point. As will be seen throughout the transcripts, she was always cut off primarily by the judge.

On page 212 et seq., Ms. Tsaknis was not allowed to ask questions concerning racial slurs. This happens to be on redirect examination.

On page 233 et seq., with James Blount as witness, cousel was not permitted to ask questions concerning racial slurs directed at Om Magoon, especially since there might have been a possible conflict with an earlier affidavit. The witness should have been allowed to testify. If it is argued that there is a conflict with an earlier affidavit, this may affect his credibility, but he should be allowed to

answer a specific question.

Second, moving to the transcript of the September 11 hearing.

On page 8, the judge sustained the company attorney's objection without bothering to listen to the basis for the objection. In fact, the company attorney never did give any reason for his objection.

On page 12, Ms. Tsaknis was not allowed to develop her point. The question was a fair one, dealing with important issue. The judge cut her off every time. She was not allowed to get anything in. Consequently, the jury was not given a chance to hear the case, or any case for that matter.

On page 41, with Blount as witness, he was not allowed to answer on redirect examination what the company attorney had asked him about. Again, we see an obvious bias by the judge.

On page 75, again the judge is the one making an objection.

On page 77, shows bias by the judge.

On page 190, Ms Tsaknis asked a specific question concerning "color of his skin." The judge shows clear bias by his ruling. The company attorney never got a chance to give the reason for his objection when the judge jumped in.

This case involved a reduction in force. Clearly, performance was not an issue. (See page 68 of September 10 transcript, and page 64 of September 11 transcript). The reduction in force was based on ability. Clearly, I had more ability, skills and experience than Mr. Swerbinsky. At the time of the reduction in force and afterwards, the company never mentioned that the possession of a PE license was a factor in the decision. Only much, much later was the

PE license brought up. This clearly was a pretext for the real reason which was discrimination.

If the PE license was not important, if Magoon's performance was not in question, the only business basis left to consider is seniority. Clearly, Magoon had more seniority than Mr. Swerbinsky, even if it is only slightly more seniority. Thus, the only remaining possible reason is Magoon's age. If the judge had been more fair by letting Ms. Tsaknis present her case without the interruption, the jury would had something to evaluate. The jury might not have decided in my favor, but I deserved the chanceto have them decide, rather than the judge.

Still on the subject of the importance of the PE license, Mr. Gearhart, the company representative, testified that he knew nothing about the

importance of the PE license. There was specific testimony that there was actually no need for the PE license to certify documents (see testimonies of Blount and Magoon). In fact, at the unemployment compensation proceedings, the company's official reason for my termination was that the job had been abolished. The company changed this reason much later.

Ms. Tsaknis tried to bring evidence about the company's "mentality" of hiring the young and firing the old. The judge erred in not letting this in saying it was "statistical." Ms. Tsaknis tried to introduce evidence concerning harassment. Again, the judge erred in not letting her do this. Specific questions concerning "color" were not allowed by the judge. This clearly was error. So much was stated concerning an "even split" in the choice

for the RIF. While there were four people involved, Blucher Allison actually was part of management. There really was not an "even split."

No wonder the judge decided that there was not enough evidence for the case to go to the jury. The judge made sure that relevant evidence would not come in so he could rule this way.

Principles of justice and equity require that a plaintiff be given much leeway in presenting his case to the jury. The jury needs to hear the facts of the case. Here, the facts never came out. Relevant and material facts were not allowed to come in by the judge. In many instances, there were no objections from the company attorney. The judge took it upon himself to object. The judge also took it upon himself to provide the reasons for the company's objections. This is not the role of a

judge. If the company attorney does not object, the judge is legally bound to let the evidence in, unless there is a clear and compelling reason not to. This was not the case.

I deserve a new trial before a different judge. I may not be able to convince a jury that I should prevail, but I deserve the chance to at least present the facts.

CONCLUSION

For the reasons stated herein, this Court should issue a Writ of Certiorari and review the decisions below.

Respectfully submitted,

OM P. MAGOON,
718 Mitchell Drive
Oakland, MD. 21550
(301) 334- 1163

Petitioner

Appendix A

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

OM P. MAGOON,

Plaintiff-Appellant,

v.

METTIKI COAL COMPANY,

Defendant-Appellee,

and

MID-AMERICAN PIPELINE COMPANY, INCORPORATED,

Defendant.

No. 91-1232

Appeal from the United States District Court for the District of Maryland, at Baltimore. John R. Hargrove, District Judge. (CA-87-187-HAR)

Submitted: September 14, 1992

Decided: October 20, 1992

Before WIDENER, HALL, and MURNAGHAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Om P. Magoon, Appellant Pro Se. Robert Barnhouse, Stephen Bruce Lebau, PIPER & MARBURY, Baltimore, Maryland, for Appellee.

MAGOON v. METTIKI COAL CO.

Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6

OPINION

PER CURIAM:

Om P. Magoon appeals from the district court's order granting the Appellee's motions for a directed verdict on his age discrimination claim and an involuntary dismissal of his Title VII claim. Magoon's action was filed pursuant to the

Age Discrimination in Employment Act (ADEA), 29 U.S.C.A. §§ 621-634 (West 1985 & Supp. 1992), and Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. §§ 200e to -17 (West 1981 & Sup. 1992).

Our review of the record and the district court's opinion from the bench discloses that this apeal is without merit. We affirm on the reasoning of the district court. Magoon v. Mettiki Coal Co., No. CA-87-187-HAR (D. Md. Sept. 17, 1991).

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED

Appendix B

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES COURTHOUSE

1100 EAST MAIN STREET

RICHMOND, VIRGINIA 23219

BERT M. MONTAGUE
CLERK

TELEPHONE
(804) 771-2213

November 18, 1992

Om P. Magoon
718 Mitchell Drive
Oakland, MD 21550

Robert Bolon Barnhouse, Esq.
PIPER & MARBURY
36 South Charles Street
Baltimore, MD 21201

Stephen Bruce Lebau, Esq.
PIPER & MARBURY
36 South Charles Street
Baltimore, MD 21201

Re: 91-1232 Magoon v. Mettiki

Coal Company CA-87-187-HAR

Dear Counsel:

Enclosed is a copy of an order filed November 18, 1992 in this case.

Yours truly,

BERT M. MONTAGUE

CLERK

/s/ Shirley J. Beasley

By:_____

Deputy Clerk

Enclosure(s)

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED

November 18, 1992

No. 91-1232

CA-87-187-HAR

OM P. MAGOON

Plaintiff - Appellant

v.

METTIKI COAL COMPANY

Defendant - Appellee

and

MID-AMERICAN PIPELINE COMPANY, INC.

Defendant

O R D E R

The appellant has filed a petition for rehearing.

The court denies the petition for rehearing.

For the Court,

/s/ Bert M. Montague

CLERK

Appendix C

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED

November 25, 1992

No. 91-1232

CA-87-187-HAR

Magoon v. Mettiki Coal Company

M A N D A T E

The judgment of this Court dated 10/20/92 takes effect today.

BERT M. MONTAGUE

CLERK

Appendix D

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

September 17, 1991

OM P. MAGOON

Plaintiff,

v. CIVIL ACTION

NO. HAR-87-187

METTIKI COAL CORPORATION,

Defendant.

ORDER

This civil action came on for trial on the merit on September 9, 1991, the plaintiff's claims under the Age Discrimination in Employment Act of 1976, 29 U.S.C. § 621, et seq. ("ADEA") being tried by a jury and all other claims being tried by the Court without jury. After the close of the evidence offered by the plaintiff, the defendant moved for a directed verdict under Fed.R.Civ.P. 50(a) on the ADEA claims, and moved for

an involuntary dismissal under Fed.R.Civ.P. 41(b) on the remaining claims. After considering memoranda submitted by counsel and hearing arguments of counsel, the Court, on September 12, 1991, set forth its findings of fact and conclusions of law on the record in open court and granted the motions of the defendant.

THEREFORE, it is this sixteenth day of September, 1991, hereby ordered:

1. That judgment be entered in favor of defendant Mettiki Coal Corporation on all claims.

2. That the Clerk notify counsel for the parties of the entry of judgement.

John R. Hargrove

United States District Judge

September 18, 1991

✓ Filed ✓ Entered

_____ Lodged _____ Received